

ENTERED

July 27, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISIONDANIEL AIELLO, *et al*,

Plaintiffs,

VS.

BRIAN COLLIER, *et al*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-067

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION
AND
OVERRULING OBJECTIONS TO ORDER
DENYING MOTION FOR JUDICIAL NOTICE**

On May 17, 2021, United States Magistrate Judge Jason B. Libby issued his “Memorandum and Recommendation” (M&R, D.E. 16), performing an initial screening of this action and recommending that this Court deny certification of a class action, dismiss without prejudice the separate claims of Abner Lee Cocke, dismiss Plaintiff Daniel Aiello’s claims against the Texas Department of Criminal Justice (TDCJ) under 42 U.S.C. § 1983, and retain the claims for injunctive relief against TDCJ Director Brian Collier in his official capacity pursuant to the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq. and the Civil Rights Act, 42 U.S.C. § 1983 (based on the denial of equal protection). Plaintiff was provided proper notice of, and opportunity to object to, the Magistrate Judge’s M&R. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); General Order No. 2002-13. No objections have been timely filed.

When no timely objection to a magistrate judge’s M&R is filed, the district court need only satisfy itself that there is no clear error on the face of the record and accept the

magistrate judge's memorandum and recommendation. *Guillory v. PPG Industries, Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)).

Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge's M&R (D.E. 16), and all other relevant documents in the record, and finding no clear error, the Court **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, the Court:

1. **DENIES** certification of this action as a class action and strikes all class action allegations;
2. **DISMISSES WITHOUT PREJUDICE** the claims of Abner Lee Cocke;
3. **DISMISSES WITH PREJUDICE** Plaintiff Daniel Aiello's claims against the Texas Department of Criminal Justice (TDCJ) under 42 U.S.C. § 1983; and
4. **RETAINS** Plaintiff Daniel Aiello's claims for injunctive relief against TDCJ Director Brian Collier in his official capacity pursuant to the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq. and the Civil Rights Act, 42 U.S.C. § 1983 (based on the denial of equal protection).

On June 29, 2021, Defendant Collier filed his Answer (D.E. 24), asserting various defenses and affirmative defenses to the retained claims in this action. In response, Plaintiff Aiello filed a Motion for Judicial Notice (D.E. 27). In his motion, Aiello claims

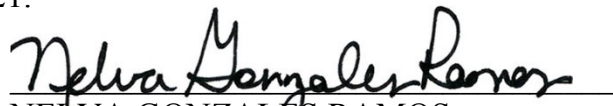
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that Collier's answer constituted objections to the M&R filed after the deadline for doing so and asserting that Plaintiff has thus prevailed on his action by default. The Magistrate Judge denied the motion in an order (D.E. 29) issued July 12, 2021. On July 23, 2021, Plaintiff Aiello filed his objection (D.E. 31) to the order (D.E. 29), thus appealing it to this Court.

Plaintiff misunderstands the purpose of the M&R. The M&R was designed to screen the case for viable claims before serving any Defendants. As such, Defendant Collier was not a party to the case at the time the M&R was issued and he had no obligation to object to it. The M&R did not adjudicate the retained claims, but only allows Plaintiff Aiello to go forward on them. Under principles of due process, Defendant Collier now has the right to appear and be heard on his defenses. That was the purpose of the answer (D.E. 24) that he filed.

Consequently, Plaintiff is not entitled to judicial notice or any other order declaring this case adjudicated on the basis of the initial screening M&R. The Magistrate Judge properly denied the motion (D.E. 27). This Court now **OVERRULES** Plaintiff Aiello's objection (D.E. 31) to that order (D.E. 29). Both parties may proceed to prosecute and defend this action on the merits.

ORDERED this 27th day of July, 2021.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE